

ORDINANCE NO. _____

1 AN ORDINANCE amending Chapter 10.16 of the Lincoln Municipal Code by
2 amending Section 10.16.030 to change the penalty provisions for second offense DWI; by
3 adding a new Section 10.16.045 relating to restrictions on motor vehicles; and repealing
4 Section 10.16.030 of the Lincoln Municipal Code as hitherto existing.

5 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

6 Section 1. That Section 10.16.030 of the Lincoln Municipal Code be amended
7 to read as follows:

8 **10.16.030 Under Influence of Alcoholic Liquor; Alcohol in Body Fluid; Penalty.**

9 It shall be unlawful for any person to operate or be in the actual physical control of any
10 motor vehicle while under the influence of alcoholic liquor, or of any drug, or when that
11 person has a concentration of eight hundredths (.08) of one gram or more by weight of alcohol
12 per 100 milliliters of his or her blood, or when that person has a concentration of eight
13 hundredths (.08) of one gram or more by weight of alcohol per 210 liters of his or her breath.
14 Every person who violates this section shall be guilty of a misdemeanor and, upon conviction,
15 shall be punished as follows:

16 (a) If such person has not had a previous conviction for this offense in Nebraska in
17 the twelve years prior to the date of the current conviction, under state law or under a city or
18 village ordinance enacted pursuant thereto, such person shall be imprisoned in the county jail
19 not less than seven days nor more than sixty days, and shall be fined not less than \$400.00 nor
20 more than \$500.00, recoverable with costs, and the court shall, as part of the judgment of

1 conviction, order such person not to drive any motor vehicle for any purpose for a period of
2 six months from the date ordered by the court and shall order that the operator's license of
3 such person be revoked for a like period. Such revocation shall be administered upon
4 sentencing, upon final judgment of any appeal or review, or upon the date that any probation
5 is revoked. Such revocation shall not run concurrently with any jail term imposed. If the
6 court places such person on probation or suspends the sentence for any reason, the court shall,
7 as one of the conditions of probation or sentence suspension, order such person not to drive
8 any motor vehicle for any purpose for a period of sixty days from the date of the order, unless
9 otherwise authorized by an order issued pursuant to Neb. Rev. Stat. § 60-6,211.05, and such
10 order of probation shall also include, as one of its conditions, the payment of a \$400.00 fine.

11 (b) If such person has had one conviction for this offense in Nebraska in the twelve
12 years prior to the date of the current conviction, (i) under state law or; (ii) under a city or
13 village ordinance enacted pursuant thereto; or (iii) under a law of another state, if at the time
14 of the conviction under the law of another state, the offense for which such person was
15 convicted would have been a violation under Neb. Rev. Stat. § 60-6,196, such person shall
16 be imprisoned in the county jail not less than thirty days nor more than ninety days, and shall
17 be fined \$500.00, recoverable with costs, and the court shall, as part of the judgment of
18 conviction, order such person not to drive any motor vehicle for any purpose for a period of
19 one year from the date ordered by the court, and shall order that the operator's license of such
20 person be revoked for a like period. Such revocation shall be administered upon sentencing,
21 upon final judgment of any appeal or review, or upon the date that any probation is revoked.
22 Such revocation shall not run concurrently with any jail term imposed. ~~If the court places~~

1 ~~such person on probation or suspends the sentence for any reason, the court shall, as one of~~
2 ~~the conditions of probation or sentence suspension, order such person not to drive any motor~~
3 ~~vehicle in the State of Nebraska for any purpose for a period of six months from the date of~~
4 ~~the order and such order of probation shall include as one of its conditions confinement in the~~
5 ~~county jail for forty-eight hours and the payment of a \$500.00 fine.~~ If the court places such
6 person on probation or suspends the sentence for any reason, the court shall, as one of the
7 conditions of probation or sentence suspension, order such person not to drive any motor
8 vehicle in the State of Nebraska for any purpose for a period of one year from the date of the
9 order unless otherwise authorized by an order issued pursuant to Neb. Rev. Stat. § 60-
10 6,211.05 and shall issue an order pursuant to Lincoln Municipal Code Section 10.16.045 with
11 respect to all motor vehicles owned by such person, and such order of probation shall also
12 include, as conditions, the payment of a \$500.00 fine and either confinement in the county
13 jail for five days or the imposition of not less than 240 hours of community service.

14 (c) For each conviction under this section, the court shall, as part of the judgment
15 of conviction, make a finding on the record as to the number of the defendant's prior
16 convictions for this offense in Nebraska in the twelve years prior to the date of the current
17 conviction, under state law or under a city or village ordinance enacted pursuant thereto. The
18 defendant shall be given the opportunity to review the record of his or her prior convictions,
19 bring mitigating facts to the attention of the court prior to sentencing, and make objections on
20 the record regarding the validity of such prior convictions. For purposes of this section, the
21 twelve-year period shall be computed from the date of the prior offense to the date of the
22 offense which resulted in the current conviction and the terms "conviction for this offense" and

1 "prior conviction" shall include any conviction under this section, under the state law pursuant
2 to which this section was enacted, or under any city or village ordinance enacted pursuant to
3 said state law, as the same existed at the time of such conviction, regardless of subsequent
4 amendments thereto.

5 (d) The provisions of this section shall apply anywhere throughout the city except
6 private property which is not open to public access.

7 (e) Any period of revocation imposed under this section shall be reduced by any
8 period imposed under Neb. Rev. Stat. § 60-6,206. Any period of revocation imposed under
9 this section shall not prohibit the operation of a motor vehicle under the terms and conditions
10 of an employment driving permit issued pursuant to subsection (2) of Neb. Rev. Stat. § 60-
11 6,206.

12 Section 2. That Section 10.16.045 of the Lincoln Municipal Code be added to
13 read as follows:

14 **10.16.045 Driving Under Influence of Alcoholic Liquor or Drug; Second Offense;**
15 **Restrictions on Motor Vehicles.**

16 Upon conviction for a second violation of Lincoln Municipal Code Section 10.16.030
17 or 10.16.040, the court shall impose either of the following restrictions on all motor vehicles
18 owned by the person so convicted:

19 (a) The court shall order the motor vehicle or motor vehicles immobilized at the
20 owner's expense for a period of time not less than five days and not more than eight months
21 and shall notify the Department of Motor Vehicles of the period of immobilization. Any
22 immobilized motor vehicle shall be released to the holder of a bona fide lien on the motor
23 vehicle executed prior to such immobilization when possession of the motor vehicle is

1 requested as provided by law by such lienholder for purposes of foreclosing and satisfying
2 such lien. If a person tows and stores a motor vehicle pursuant to this section at the direction
3 of a peace officer or the court and has a lien upon such motor vehicle while it is in his or her
4 possession for reasonable towing and storage charges, the person towing the vehicle has the
5 right to retain such motor vehicle until such lien is paid. For purposes of this section,
6 immobilized or immobilization means revocation or suspension, at the discretion of the court,
7 of the registration of such motor vehicle or motor vehicles, including the license plates; and

8 (b) (1) Any immobilized motor vehicle shall be released by the court without
9 any legal or physical restraints to any registered owner who is not the registered owner
10 convicted of a second violation of Section 10.16.030 or 10.16.040 if an affidavit is submitted
11 to the court by such registered owner stating that the affiant is employed, that the motor
12 vehicle subject to immobilization is necessary to continue that employment, that such
13 employment is necessary for the well-being of the affiant's dependent children or parents, that
14 the affiant will not authorize the use of the motor vehicle by any person known by the affiant
15 to have been convicted of a second violation of Section 10.16.030 or 10.16.040, that affiant
16 will immediately report to a local law enforcement agency any unauthorized use of the motor
17 vehicle by any person known by the affiant to have been convicted of a second violation of
18 Section 10.16.030 or 10.16.040, and that failure to release the motor vehicle would cause
19 undue hardship to the affiant.

20 (2) A registered owner who executes an affidavit pursuant to subsection
21 (b)(1) of this section which is acted upon by the court and who fails to immediately report an
22 unauthorized use of the motor vehicle which is the subject of the affidavit is guilty of a

1 misdemeanor and may not file any additional affidavits pursuant to subsection (b)(1) of this
2 section.

3 Section 3. That Section 10.16.030 of the Lincoln Municipal Code as hitherto
4 existing be and the same is hereby repealed.

5 Section 4. That this ordinance shall take effect and be in force from and after
6 its passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ____ day of _____, 2003:

Mayor